IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 14TH DECEMBER 2006 / 23RD AGRAHAYANA 1928

Bail Appl..No. 7150 of 2006()

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AGAINST THE JUDGEMENT/ORDER IN BA.3666/2006
CRIME NO. 227/05 OF MARARIKULAM POLICE STATION

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PETITIONER/7TH ACCUSED
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BINEESH, S/O.K.A.NATESAN,
KALATHIL VEEDU, CHERAI,
ERNAKULAM.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.SOJAN MICHEAL
SRI.C.P.UDAYABHANU

RESPONDENTS: COMPLAINANT
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STATE OF KERALA,
(DEPUTY SUPERINTENDENT OF POLICE,
CRIME DETACHMENT, ALAPPUZHA),
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADDL. DIRECTOR GENERAL OF PROSECUTION SRI.MOHANAN

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/12/2006, THE COURT ON 14/12/2006 PASSED THE FOLLOWING:

**V. RAMKUMAR, J.**

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**Bail Application No.7150 OF 2006**

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**Dt. DECEMBER 14, 2006**

**ORDER**

Petitioner who is the 7th accused in Crime No.227/2005 of Mararikkulam Police Station for offences punishable under secs.115, 120B, 307 and 302 read with sec.34 I.P.C., seeks his enlargement on bail. He was arrested on 30-09-2005 and ever since then he is in judicial custody.

2. Adv. Sri. Mohanan, the learned Addl. Director General of Prosecutions, vehemently opposed the application.

3. Sr. Adv. Sri. M.K. Damodaran, the learned Counsel appearing for the petitioner made the following submissions in support of his request for bail:-

The petitioner who is the 7th accused is only one of the two Managing Directors of Himalaya Chit Funds. Just because the petitioner was arrested only after two months of the occurrence it does not follow that he was absconding. In the criminal cases in which the petitioner is an accused, he has been granted bail. Merely because he is made an accused in those cases it does not follow that the prosecution allegation is true unless he is convicted in any of those

cases. There is no circumstance from which it could be inferred that the petitioner will flee from justice or that he will influence or intimidate the prosecution witnesses and abuse the freedom given to him by this Court. He has been in custody now for more than 438 days and since the prosecution has started further investigation, there is no immediate prospect of the case being taken up for trial in the near future. The 4th accused was granted bail by this Court after 465 days of custody.

4. I am afraid that I cannot agree with the above submissions.

This case is popularly known as the "Kanichukulangara murder case". A synoptic resume of the prosecution case is as follows:-

Accused Nos.6 and 7 (Sajith and Bineesh) are the managing partners of a chit company by name "Southern Himalaya Chits Pvt. Ltd." with head office at Cherayi in Ernakulam District. During the years 2002-03 deceased Ramesh was working as the General Manager in the Himalaya Chits. Subsequently the relationship between Ramesh and Accused Nos.6 and 7 became strained. Accused Nos.6 and 7 had raised an allegation that Ramesh had committed theft of five blank cheque leaves signed by them and a Bullet motor cycle bearing registration No.KRV 4766 and also the vehicular records of a jeep bearing registration No.KLL 5809. Due to the strained relationship between Ramesh and accused Nos.6 and 7, Ramesh resigned from Himalaya

Chits sometime in January 2004. Ramesh, who was adept in the conduct of chitty business, soon started a similar business under the name and style "Everest Chitties" at Vedimara. Within a span of 1½ years the chitty business of Ramesh flourished and he soon started seven branches which were very close to the premises of Himalaya Chits. The rival business started by Ramesh had badly affected the business of accused Nos.6 and 7. They, therefore, decided to do away with Ramesh. The 3rd accused (Saju @ Mrigham Saju) who was a loyal worker of accused Nos.6 and 7 was employed by them to engineer the operation. Accused No.3 preferred a complaint against Ramesh and the said case was pending trial before the J.F.C.M. Court, North Parur. One Abhilash also filed a criminal complaint against Ramesh at the instance of accused Nos.6 and 7. On account of the constant harassment by accused Nos.6 and 7, Ramesh was forced to shift his residence from Cherayi to a rented house at Vadakkumpuram in North Parur. The employees of accused Nos.6 and 7 pelted stones at the house of Ramesh at Cherayi and caused damage to his house. On 18.9.2004 an attempt was made on his life. He, however, escaped with serious injuries. On the basis of a complaint lodged by Ramesh, a case was registered against accused Nos.6 and 7 and some others. Thereafter at the instance of accused Nos.6 and 7 and pursuant to a criminal conspiracy

hatched by them, the 3rd accused hired accused Nos.1 and 2 (Unni and Ajithkumar @ Aji)who were gundas and hired assassins to commit the murder of Ramesh in a manner which would ostensibly appear to be a road accident. Accused No.6 drew a sum of Rs.50,000/- from his ATM account and paid the same to the 1st accused through the 3rd accused. Utilising the said amount a lorry bearing registration No.KRO 1760 was acquired by accused Nos.1 and 2 in the name of the 2nd accused. Accused No.3 and accused No. 4 (Shiby), who were the employees and loyalists of accused Nos.6 and 7, purchased a Qualis car and were constantly watching the movements of Ramesh. On 20.7.2005 deceased Ramesh was travelling in a red coloured Tata Safari car bearing registration No.KL-13/E 9180 from south to north along the Alappuzha - Ernakulam National Highway. Pursuant to the criminal conspiracy hatched between accused Nos.3, 4, 6 and 7, the 1st accused was communicated through mobile phone by accused Nos.3 and 4 about the whereabouts of Ramesh whom they were following in the Qualis car. Accused Nos.1 and 2 thus drove the lorry bearing registration No.KRO 1760 from north to south i.e. from Ernakulam to Alappuzha in accordance with the directions given to them through the mobile phone by accused Nos.3 and 4. When the Tata Safari car in which Ramesh, along with his family members and others, was travelling reached the

place called Kanichukulangara within the limits of the Mararikkulam Police Station in Alappuzha District, the lorry driven by accused Nos.1 and coming from the opposite direction and rammed into the Tata Safari car resulting in a head on collision and the lorry telescoping into the Safari car. The car was crushed and Ramesh, his sister Latha and his standby driver by name Shamsuddin died on the spot. Two other persons who were travelling in the car sustained grievous hurt. This, in short, is the prosecution case.

5. Thus the petitioner and the 6th accused (who had surrendered before the committal court recently) are the main beneficiaries out of the "operation assassination" of Ramesh. The fact that the petitioner was absconding after the occurrence and he could be apprehended only on 30-9-2005 also cannot be brushed aside. There is material to show that the petitioner had after the occurrence rejoiced the successful execution of the plot, by distributing sweets. After the occurrence, he along with A6 had gone and resided in a place near Ootty leaving no clue about their whereabouts. The petitioner is also an accused in more than 11 cases of which two are cases are involving an offence punishable under Sec. 307 I.P.C. Those 11 cases including cheating cases as well. It is true that he has not been convicted in any of those cases which are yet to come up for trial. His position in life and

his plutocratic clout also cannot be lost sight of to infer that he may go to any extent to buy an acquittal. The very fact that one of the charge witnesses (CW2) had filed a Writ Petition as W.P.C. 24576/06 alleging that the witnesses were intimidated also cannot be taken lightly by the court. many of the prosecution witnesses are employees of the concern of which the petitioner is the Managing Director No doubt, due to further investigation commenced by the police under Sec. 173 (8) Cr.P.C. there is a likelihood of the commencement of the trial getting delayed. But that is no reason why the petitioner should be released on bail. In case, the trial is getting delayed beyond reasonable limits, the question of granting bail to the petitioner can then be considered. On a perusal of the materials on record and tested the same with the parameters laid down in **Kalyan Chandra Sarkar v. Rajesh Ranjan @ Pappu Yadav and Another - 2004 (7) SCC 528 and Anil Kumar Tulsiyani v. State of U.P. - 2006 (2) KLT 806,** I am not inclined to grant bail to the petitioner.

This petition is accordingly, dismissed.

**(V.RAMKUMAR, JUDGE)**

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